

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

GARY ALVA THATCHER,

Plaintiff,

v.

COUNTY OF EATON,

Defendant.

Case No. 2:09-CV-114

HON. GORDON J. QUIST

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court has before it Plaintiff's motion to vacate the Magistrate Judge's Report and Recommendation, which the Court will treat as an objection to the Report and Recommendation. The Magistrate Judge recommended that Plaintiff's declaratory judgment action be dismissed for failure to state a claim because (1) Plaintiff's claim is properly analyzed as a habeas action under 28 U.S.C. § 2254; and (2) Plaintiff refused to amend his complaint to allege his habeas claim challenging the constitutionality of Michigan's criminal sexual conduct statute.

Plaintiff argues that the Magistrate Judge's report should be vacated because the Magistrate Judge had a conflict of interest when the report was issued. Plaintiff and fourteen other inmates filed a civil rights action against the Magistrate Judge on August 21, 2009, claiming that the Magistrate Judge violated their rights by ordering the Clerk of the Court to reject certain pleadings that were not filed on the correct form. This action was dismissed for failure to state a claim. Furthermore, a prisoner cannot cause a judge to be disqualified simply by filing a claim against the judge. Thus, Plaintiff's argument lacks merit. Additionally, Plaintiff cannot maintain a declaratory judgment action on the facts of this case. *See Rittenberry v. Morgan*, 468 F.3d 331, 336-37 & n.3 (6th Cir.

2006) (stating that the only remedy for a state prisoner seeking post-conviction relief from a federal court is an application for a writ of habeas corpus). Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion to vacate (docket #12) the Magistrate Judge's Report and Recommendation is **DENIED**, and the Report and Recommendation (docket #11) is approved and adopted as the opinion of this Court.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order would not be taken in good faith.

Dated: December 29, 2009

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE